

# OPEN MEETING ITEM



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**COMMISSIONERS**  
MARC SPITZER - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES



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ARIZONA CORPORATION COMMISSION

2003 DEC 30 P 12 41

DATE: DECEMBER 30, 2003

ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL

DOCKET NO: T-04194A-03-0514

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amanda Pope. The recommendation has been filed in the form of an Order on:

LEC COMMUNICATIONS, INC.  
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JANUARY 8, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JANUARY 13, 2004 and JANUARY 14, 2004

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

**DOCKETED**

DEC 30 2003

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DOCKETED BY	
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1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

[www.cc.state.az.us](http://www.cc.state.az.us)

This document is available in alternative formats by contacting Yvonne McFarlin, ADA Coordinator, voice phone number 602-542-3931, E-mail [YMcFarlin@cc.state.az.us](mailto:YMcFarlin@cc.state.az.us)

1  
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 MARC SPITZER, Chairman  
5 WILLIAM A. MUNDELL  
6 JEFF HATCH-MILLER  
7 MIKE GLEASON  
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF US  
10 LEC COMMUNICATIONS, INC. FOR A  
11 CERTIFICATE OF CONVENIENCE AND  
12 NECESSITY TO PROVIDE COMPETITIVE  
13 RESOLD INTEREXCHANGE  
14 TELECOMMUNICATIONS SERVICES, EXCEPT  
15 LOCAL EXCHANGE SERVICES.

DOCKET NO. T-04194A-03-0514

DECISION NO. \_\_\_\_\_

ORDER

16 Open Meeting  
17 January 13 and 14, 2004  
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

20 Having considered the entire record herein and being fully advised in the premises, the  
21 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

22 FINDINGS OF FACT

23 1. On July 25, 2003, US LEC Communications, Inc ("Applicant" or "US LEC") filed  
24 with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to  
25 provide competitive resold interexchange telecommunications services, except local exchange  
26 services, within the State of Arizona.

27 2. Applicant is a switchless reseller that purchases telecommunications services from a  
28 variety of carriers for resale to its customers.

3. In Decision No. 58926 (December 22, 1994), the Commission found that resold  
telecommunications providers ("resellers") are public service corporations subject to the jurisdiction  
of the Commission.

4. US LEC has authority to transact business in the State of Arizona.

5. On August 26, 2003, US LEC filed an Affidavit of Publication indicating compliance  
with the Commission's notice requirements.

1           6.       On December 8, 2003, the Commission's Utilities Division Staff ("Staff") filed a Staff  
2 Report in this matter, which includes Staff's fair value rate base determination in this matter and  
3 recommends approval of the application subject to certain conditions.

4           7.       In the Staff Report, Staff stated that US LEC provided financial statements for the  
5 twelve month period ending December 31, 2002, which list assets of \$285 million, negative equity of  
6 \$153 million, and a net loss of \$45 million.<sup>1</sup>

7           8.       In its Staff Report, Staff stated that based on information obtained from the Applicant,  
8 it has determined that US LEC's fair value rate base ("FVRB") is zero. Staff has determined that  
9 Applicant's FVRB is too small to be useful in a fair value analysis and is not useful in setting rates.  
10 Staff further stated that in general, rates for competitive services are not set according to rate of return  
11 regulation, but are heavily influenced by the market. Staff recommended that the Commission not set  
12 rates for US LEC based on the fair value of its rate base.

13           9.       Staff believes that US LEC has no market power and that the reasonableness of its  
14 rates will be evaluated in a market with numerous competitors. In light of the competitive market in  
15 which the Applicant will be providing its services, Staff believes that the rates in Applicant's  
16 proposed tariffs for its competitive services will be just and reasonable, and recommends that the  
17 Commission approve them.

18           10.      Staff recommended approval of US LEC's application subject to the following:

19                   (a)     The Applicant should be ordered to comply with all Commission rules, orders,  
20 and other requirements relevant to the provision of intrastate telecommunications  
21 service;

22                   (b)     The Applicant should be ordered to maintain its accounts and records as  
23 required by the Commission;

24                   (c)     The Applicant should be ordered to file with the Commission all financial and  
25 other reports that the Commission may require, and in a form and at such times as the  
26 Commission may designate;

27                   (d)     The Applicant should be ordered to maintain on file with the Commission all  
28 current tariffs and rates, and any service standards that the Commission may require;

<sup>1</sup> US LEC Communications, Inc.'s application and supporting documentation indicate that this financial information is derived from a consolidated financial statement for US LEC Corp. and subsidiaries.

1 (e) The Applicant should be ordered to comply with the Commission's rules and  
2 modify its tariffs to conform to these rules if it is determined that there is a conflict  
3 between the Applicant's tariffs and the Commission's rules;

4 (f) The Applicant should be ordered to cooperate with Commission investigations,  
5 including but not limited to, customer complaints;

6 (g) The Applicant should be ordered to participate in and contribute to a universal  
7 service fund, as required by the Commission;

8 (h) The Applicant should be ordered to notify the Commission immediately upon  
9 changes to the Applicant's address or telephone number;

10 (i) If the Applicant, at some future, date wants to collect from its customers an  
11 advance, deposit, and/or prepayment, it must file information with the Commission for  
12 Staff review. Upon receipt of such filing and after review, Staff would forward its  
13 recommendations to the Commission;

14 (j) The Applicant's interexchange service offerings should be classified as  
15 competitive pursuant to A.A.C. R14-2-1108;

16 (k) The Applicant's maximum rates should be the maximum rates proposed by the  
17 Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive  
18 services should be the Applicant's total service long run incremental costs of  
19 providing those services as set forth in A.A.C. R14-2-1109; and

20 (l) In the event that the Applicant states only one rate in its proposed tariff for a  
21 competitive service, the rate stated should be the effective (actual) price to be charged  
22 for the service as well as the service's maximum rate.

23 11. Staff further recommended that US LEC's Certificate should be conditioned upon the  
24 Applicant filing conforming tariffs in accordance with this Decision within 365 days of the effective  
25 date of this Decision, or 30 days prior to providing service, whichever comes first.

26 12. Staff recommended that if the Applicant fails to meet the timeframes outlined in  
27 Findings of Fact No. 11, that US LEC's Certificate should become null and void without further  
28 Order of the Commission, and that no time extensions for compliance should be granted.

13. The rates proposed by this filing are for competitive services.

14. Staff's recommendations as set forth herein are reasonable.

15. US LEC's fair value rate base is zero.

**CONCLUSIONS OF LAW**

1  
2 1. Applicant is a public service corporation within the meaning of Article XV of the  
3 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

4 2. The Commission has jurisdiction over Applicant and the subject matter of the  
5 application.

6 3. Notice of the application was given in accordance with the law.

7 4. Applicant's provision of resold interexchange telecommunications services is in the  
8 public interest.

9 5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for  
10 providing competitive resold interexchange telecommunications services in Arizona.

11 6. Staff's recommendations in Findings of Fact Nos. 8, 9, 10, 11, and 12 should be  
12 adopted.

13 7. US LEC's fair value rate base is not useful in determining just and reasonable rates for  
14 the competitive services it proposes to provide to Arizona customers.

15 8. US LEC's rates, as they appear in its proposed tariffs, are just and reasonable and  
16 should be approved.

**ORDER**

17  
18 IT IS THEREFORE ORDERED that the application of US LEC Communications, Inc. for a  
19 Certificate of Convenience and Necessity for authority to provide competitive resold interexchange  
20 telecommunications services, except local exchange services, is hereby granted, conditioned upon its  
21 compliance with the conditions recommended by Staff as set forth in Findings of Fact Nos. 10, 11  
22 and 12 above.

23 IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos.  
24 8, 9, 10, 11, and 12 above are hereby adopted.

25 ...

26 ...

27 ...

28 ...

1 IT IS FURTHER ORDERED that US LEC Communications, Inc. shall comply with the  
2 adopted Staff recommendations as set forth in Findings of Fact Nos. 10 and 11 above.

3 IT IS FURTHER ORDERED that if US LEC Communications, Inc. fails to meet the  
4 timeframes outlined in Findings of Fact No. 11 above, that the Certificate conditionally granted  
5 herein shall become null and void without further Order of the Commission.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
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9

10 CHAIRMAN

COMMISSIONER

COMMISSIONER

11  
12  
13 COMMISSIONER

COMMISSIONER

14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
15 Secretary of the Arizona Corporation Commission, have  
16 hereunto set my hand and caused the official seal of the  
17 Commission to be affixed at the Capitol, in the City of Phoenix,  
18 this \_\_\_\_ day of \_\_\_\_\_, 2004.

19 BRIAN C. McNEIL  
EXECUTIVE SECRETARY

20 DISSENT \_\_\_\_\_

21  
22 DISSENT \_\_\_\_\_  
AP:mj

1 SERVICE LIST FOR: US LEC COMMUNICATIONS, INC.

2 DOCKET NO.: T-04194A-03-0514

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